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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,023	11/13/2001	Raymond F. Cracauer	FORS-06679	3272
7590	03/10/2005		EXAMINER	
MEDLEN & CARROLL, LLP			HANDY, DWAYNE K	
Suite 350				
101 Howard Street			ART UNIT	PAPER NUMBER
San Francisco, CA 94105			1743	

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/054,023	CRACAUER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Dwayne K Handy	1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 December 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,5,6,20,22 and 24-30 is/are pending in the application.  
 4a) Of the above claim(s) 25-30 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,5,6,20,22 and 24 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Newly submitted claims 25-30 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Newly submitted claims 25-30 (Invention II) are directed to a method of decreasing vapor emissions. The inventions (II and I) are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus may be used to perform reactions.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 25-30 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 20, 22 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter

which applicant regards as the invention. Claim 20 recites the limitation "said ventilation system" in line 7. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Levin et al. (6,432,365 – "Levin"). This rejection was made in the previous Office Action (mailed 7/14/2004) and remains in effect.

***Inventorship***

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable in view of Levin et al. (6,432,365 – "Levin"). This rejection was made in the previous Office Action (mailed 7/14/2004) and remains in effect.

8. Claims 20, 22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGowan et al. (6,328,627 – "McGowan") in view of Heyneker et al.

(6,264,981 – “Heyneker”). This rejection was made in the previous Office Action (mailed 7/14/2004) and remains in effect.

***Response to Arguments***

9. Applicant's arguments filed 12/17/2004 have been fully considered but they are not persuasive. In traversing the rejection of claim 1, applicant has argued that the device of Levin does not anticipate claim 1 because the device of Levin. The Examiner respectfully disagrees. While the Examiner does agree that two separate parts (elements #420 and 208) are required to meet the limitations of claim 1, the Examiner also believes that the elements in dispute from Levin still meet the limitation of “a lid enclosure comprising a ventilation system” without integrating parts. The Examiner directs applicant to column 12, line 37 - column 13, line 54. In this passage, Levin teaches that the centrifuge chamber is covered by both a chamber top portion (420) having a rear access door (212) and a venting cover (208) having a plurality of ports (210). The Examiner believes that these two elements provide, in combination without being integrated, a “lid enclosure” that has a ventilation system (port elements #210) and may also be in an open position (by opening access door #212) that is of sufficient size to permit an operator's hand to enter the reaction chamber. Again, no integration of the parts is required to meet the limitation. Therefore, claim 1 remains rejected.

10. In traversing the rejection of claims 20, 22 and 24, applicant has argued the amended claim now requires a vacuum source connected to the top enclosure and

therefore is not obvious in view of the combination of the references McGowan and Heyneker. The Examiner again respectfully disagrees. First, the amended claim refers merely to a connection to "said ventilation system". This does not specifically require the vacuum source to be connected to the ventilation port in the top enclosure – especially since the term "said ventilation system" lacks antecedent basis in the claims. But even if the Examiner were to interpret the claim in this manner, the Examiner believes that Heyneker still provides a teaching of vacuum use that would lead one of ordinary skill in the art to attach a vacuum to the lid of McGowan. In column 10 while disclosing the containment system, Heyneker teaches a vacuum valve is used to collect non-reactive gas that is pumped into the chamber. McGowan teaches a similar addition of cooling gas into a reactor headspace that is covered by a lid with a port (34) for the escaping gas. Therefore, the Examiner believes that one of ordinary skill in the art would recognize that it would be obvious to also provide a vacuum source for the port (34) to collect the gas in the contained space as taught by Heyneker.

### ***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwayne K Handy whose telephone number is (571)-272-1259. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DKH  
March 6, 2005

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700